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No Fee Pur. Gov't Code 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

HILL RHF HOUSING PARTNERS, L.P.; OLIVE RHF HOUSING PARTNER, L.P.,

Petitioners/Plaintiffs,

vs.

CITY OF LOS ANGELES *et al*,

Respondents/Defendants.

CASE NO.: BS170127

DECARATION OF DANIEL M. WHITLEY IN OPPOSITION TO MOTION TO COMPEL

Date: May 25, 2018
Time: 9:30 a.m.
Place: Dept. 86

Complaint filed: July 18, 2012

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I, Daniel M. Whitley, declare as follows:

1. I am an attorney employed by the Los Angeles City Attorney's office. I represent Respondent the City of Los Angeles (the "City") in the above-referenced case.

2. During the meet and confer process relating to this matter I had one telephone conference with Petitioners' counsel. Most of that conference addressed the City's responses to Form Interrogatories.

3. With respect to admissions, Petitioners focused not on the 11 Requests at issue here, but on roughly 40 requests that the City denied. Petitioners contended that the City had to admit those 40 Requests because, Petitioners contended, the Requests were clearly true based on the Administrative Record. Petitioners had no interest in discussing the City's objections, instead repeating words to the effect of "Let's ignore the objections for now."

4. During this telephone call I explained that the City disagreed. I provided examples where these 40 Requests were literally contradicted by the Record, and other examples where the City could agree that part of the Request was supported by the Record, but could not admit to the Request because other material parts of a Request were untrue or it mischaracterized the Record. Petitioners never conceded the issue and I am surprised they did not seek to compel further answers to those Requests as well.

5. We briefly discussed the 11 requests still at issue. Petitioners did not specifically address most of them. As I recall it, Petitioners only addressed two: Requests 57 and 72. Only Request 57 was addressed at any length. Petitioners argued that the City could answer that solely from the Record. Told again to ignore the objections, I addressed the substance and explained that the Request asks about low-income housing and below-market rental rates. I explained that the City had no idea if that was true, and because this seemed like extra-record evidence the City would need to investigate and had not yet completed its investigation, including awaiting Petitioners' responses to discovery on those exact issues. I also explained that the City had admitted or denied many similar or identical requests (as set forth in the City's Separate Statement and Opposition). I explained that given the City's responses to a number of similar requests, there did not seem to be any reason for the City to deny these for lack of information unless the City had a good reason for doing so.

6. After that, Petitioners asked cursorily about Request 72, and I said that Miranda Pastor, the person who signed the City's discovery responses, had reviewed the request and thought she could not admit or deny it outright from the Record and needed to do further investigation. I then explained that given that these seemed to literally quote documents, the only relevance would be if some other information beyond the Record was sought. Given that, the City's response seemed justified.

7. The majority of this discussion, however, dealt with the Interrogatory responses. This was largely because I did not understand Petitioners' position. Here, Petitioners continually argued that the City failed to provide "facts" to support its responses to requests for admissions. I said that the City was pretty clearly relying solely on records from the Administrative Record and had cited to those records. I said that I had no idea what else Petitioners needed or wanted, and asked for examples of a "fact" we could provide other than citing to the Record.

8. Among other things, I suggested that the City could provide the "fact" that various documents did contain the requested statement, but I pointed out that would add nothing to the City's denial itself and so did not seem proper. I offered that the City could quote relevant parts of the documents, but since the documents themselves exist that also did not seem proper.

9. Petitioners agreed that those responses would not be proper, but that the City still needed to provide "facts." When I asked for further clarification, I was told they wanted "facts" as required by the Code. I again asked what that could possibly mean other than citing to supporting documents, and was again pointed to the Code itself.

10. Finally, I said that the City could change many of its Responses to the Requests for Admission if Petitioners could stipulate that they would not introduce extra-record evidence at trial. Petitioners said that they were not yet sure if they would do so, and so could not. I said that Petitioners appeared to be trying to have it both ways, to force the City to respond solely on the Record but to reserve the right to admit extra-record evidence. I said that seemed blatantly unfair, as the City would be admitting or denying things based on the Record, but extra-record evidence could make the City's responses incorrect. I also said that in that case, the City's discovery responses also would be pointless, as under those circumstances I could not imagine the Court not relieving the City from its

(now wrongful) responses. In short, I said that Petitioners' position made it impossible for the City to change its responses to these 11 Requests.

11. The only reason the City served discovery in this case was to find any extra-record evidence Petitioners may possess. On January 31, 2018, after the Court's ruling on related motions to enter judgment, I made it clear in a post-hearing meeting that the only discovery responses I was seeking was whether any extra-record evidence was at issue and if so what that evidence was.

12. Petitioners also complained that some of the referenced documents did not address the topics of some of the Requests. The City agreed that was a fair complaint and I offered to provide more limited references, but I argued that was largely pointless as it is pretty clear which Requests require looking at the record as a whole and which point to only a few limited records. I also said that for most of the Requests the City did rely on all of the documents. Petitioners did not press this issue and appeared to drop it in later correspondence.

13. Otherwise we have had only written communications regarding discovery.

14. I graduated from UCLA School of Law in 1994. I have continuously practiced law since I was admitted to the State Bar of California. I was an associate at LeBoeuf, Lamb, Greene and Macrae for several years, was a Senior Attorney at the Los Angeles District Counsel of the Department of the Treasury, and have been employed by the Los Angeles City Attorney's Office since 2002. I am admitted to and have practiced law in every level in the United States, including the California Appellate Courts, the United States Appellate Courts, and the United States Supreme Court. I am a specialist in public finance. Attorneys with my experience, specialization and expertise generally charge at least $550 per hour.

15. Lead counsel for Petitioners in this matter is charging his client $625 per hour. I am at least as qualified, experienced and competent in this area of law and the City should be compensated at least that amount for my services.

16. I have spent 24 hours addressing this Motion, amounting to a sum of $15,000 as follows:

a. April 17, 2018: 1.75 hours reviewing Petitioner's pleadings;

b. April 19, 2018: 1.5 hours reviewing the discovery pleadings and discussing with client;

c. April 23, 2018: 4 hours researching case law, reviewing pleadings, and outlining Opposition;

d. April 24, 2018: 3.75 hours drafting Opposition

e. April 25, 2018: 4.75 hours drafting Opposition, further research, and communication to counsel

f. May 2, 2018: 2.5 hours reviewing and revising Opposition

g. May 6, 2018: 2.75 hours drafting Separate Statement

h. May 8, 2018: I.5 hours reviewing and revising Opposition and Separate Statement

i. May 10, 2018: 1.5 hours finalizing Separate Statement, drafting Declaration.

17. I expect to spend at least another 3 hours reviewing further pleadings by Petitioners and at least 2 hours in court for the hearing, for a total of 29 hours spent on this matter for a sum of $18,I25.00 at a billing rate of $625 per hour. This is a reasonable amount of time and money to spend to contest Petitioners' claims, as Petitioners argued that discovery is not limited in mandamus, an issue that required more than normal research to insure I had not overlooked a change in the law or an argument for such a change. Additionally, because the Requests at issue here seemed to differ from what Petitioners now argue they seek through discovery, I was forced to carefully review the record and determine what was actually at issue. This took far more time than I would normally put into such a process, but was required by the arguments in the Motion.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: May 11, 2018

By _____
DANIEL M. WHITLEY

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PROOF OF SERVICE

I, Cynthia Marchena, declare as follows: I am employed in the County of Los Angeles, California. I am over the age of 18 and not a party to the within action. My business address is 200 N. Main St., Rm. 920 C.H.E., and Los Angeles, California 90012.

On May 11, 2018, I served the foregoing document described as: **DECARATION OF DANIEL M. WHITLEY IN OPPOSITION TO MOTION TO COMPEL,** on the interested parties in this action by placing a **[X]** true copy **[ ]** original copy thereof enclosed in a sealed envelope addressed as follows:

Timothy D. Reuben, Esq.
REUBEN RAUCHER & BLUM
12400 Wilshire Blvd., Ste. 800
Los Angeles, CA 90025

Michael G. Colantuono, Esq.
Holly O. Whatley, Esq.
Pamela K. Graham, Esq.
Colantuono, Highsmith & Whatley, PC
790 East Colorado Blvd., Ste. 850
Pasadena, CA 91101

[x] **MAIL** - I caused such envelope to be deposited in the United States mail at Los Angeles, California, with first class postage thereon fully prepaid. I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business. I caused such envelope to be deposited in the mail at Los Angeles, California, with first class postage thereon fully prepaid.

[ ] **Federal** - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

[x] **State** - I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 11, 2018, at Los Angeles, California.

Cynthia Marchena